

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS**

**MARK CHEATWOOD and
CARYL CHEATWOOD**

PLAINTIFF

v.

CASE NO. 2:19-CV-02088-PKH

**FORT SMITH HMA, LLC
Dr. DANIEL MWANZA; and
DR. MICHELLE HORAN**

DEFENDANTS

**RESPONSE TO PLAINTIFF'S MOTION TO
EXCLUDE EXPERT TESTIMONY**

Comes Defendant, Michelle Horan, M.D. ("Dr. Horan"), by and through her attorneys, Wright, Lindsey & Jennings LLP, for her Response to Plaintiff's Motion to Exclude Expert Testimony, states as follows:

1. The Federal Rules of Civil Procedure 26(a)(2)(A)(B) states that for any expert witness identified to testify at trial, the disclosure must be accompanied by a written report signed by the witness. The Rule does not require the report to be sworn testimony or authenticated by the witness in any manner. Plaintiff's Motion to Exclude on the premise that the expert reports were not "authenticated" is not supported by procedural rule and is unfounded.

2. On June 29, 2020 as part of Dr. Horan's expert disclosures, Dr. Horan produced a written report from each expert as well as a curriculum vitae for each expert. (Exhibit A, Report, CV, and Case List for Christopher Andershock, M.D.; Exhibit B, Report, CV, and Case List for Jonathon Palmer, M.D.; Exhibit C, Report,

CV, and Case List for Roy W. Sanders, M.D.; Exhibit D, Report, CV, and Case List for Bryan Simmons, M.D.)

3. The written reports complied with the expert disclosure rules found in Federal Rule of Civil Procedure 26(a)(2)(B) and were pursuant to this Court's Order (Doc. #86).

4. Plaintiff was given every opportunity to depose Dr. Horan's experts prior to the discovery deadline set forth by this Court, but chose not to do so.

5. On September 21, 2020, at the close of the discovery period, Plaintiff filed the present Motion to Exclude Expert Testimony seeking to exclude all four experts disclosed by Dr. Horan as well as the experts disclosed by Defendants Dr. Mwanza and Fort Smith HMA, LLC.

6. Plaintiff's Motion does not state a specific basis for seeking to exclude any expert outside of a general citation to Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceutical Inc.*, 509 U.S. 579 (1993), therefore there is no specific challenge to the reports.

7. Dr. Horan has satisfied the procedural requirements for disclosing experts and producing their respective reports. Dr. Horan further satisfied her obligations under the Court's Scheduling Order (Doc#86) by making numerous offers, both verbally and confirmed in writing, offering to make her experts available for deposition at any time prior to the expiration of the deadlines set forth by this Court.

8. At this time, Dr. Horan has no other burden. By choosing not to take the depositions of defense experts, it is presumed Plaintiff has chosen to reserve his

cross-examination of them at trial. *See Elite Aviation Service LLC, v. Ace Pools, LLC*, 2020 WL 5513421 (W.D. Ark., Sept. 14, 2020) (slip copy), *citing Thomas v. FCA US LLC*, 242 F.Sup.3d 819 (8th Cir. 2017).

9. Plaintiff has failed to articulate any reason to challenge the witnesses' opinions or reports. For this reason, Plaintiff's motion should be denied.

10. In support of Dr. Horan's Response, a brief in support is filed contemporaneously herewith and is incorporated by reference.

11. Attached in support of this motion are:

- a. Exhibit A, Report, CV, and Case List for Christopher Andershock, M.D.;
- b. Exhibit B, Report, CV, and Case List for Jonathon Palmer, M.D.;
- c. Exhibit C, Report, CV, and Case List for Roy W. Sanders, M.D.; and
- d. Exhibit D, Report, CV, and Case List for Bryan Simmons, M.D.

WHEREFORE, Separate Defendant, Dr. Horan prays that the Court deny Plaintiff's Motion to Exclude Expert Testimony and for all other relief to which she may be entitled.

Respectfully submitted:

WRIGHT, LINDSEY & JENNINGS LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201-3699
(501) 371-0808
FAX: (501) 376-9442
E-MAIL: MBrowning@wlj.com
JBrowning@wlj.com

By /s/ Jason T. Browning

Jason T. Browning, Ark. Bar No. 98151
Michelle L. Browning, Ark. Bar No. 98146

Attorneys for Michelle Horan, M.D.

CERTIFICATE OF SERVICE

I do hereby certify I filed a copy of this pleading via CM/ECF which shall provide notice such filing to the below named attorneys of record on this 25th day of September, 2020:

J. Stephen Hunnicutt
17330 Preston Road, Suite 100A
Dallas, TX 75252
Steve@Hunnicuttlaw.com
Admin@Hunnicuttlaw.com

Dale Garrett
Bassett Law Firm, LLP
221 N. College Avenue
P.O. Box 3618
Fayetteville, AR 72702-3618
dgarrett@bassettlawfirm.com

Tim Boone
Sarah Greenwood
Shane Strabala
Zachary Hill
Munson, Rowlett, Moore & Boone, P.A.
1900 Regions Center
400 West Capitol Avenue
Little Rock, AR 72201
Tim.boone@mrmbllaw.com
Sarah.greenwood@mrmbllaw.com
Shane.strabala@mrmbllaw.com
Zachary.hill@mrmbllaw.com

Mr. Douglas M. Carson
Daily & Woods, PLLC
P.O. Box 1446
Fort Smith, AR 72902-1446
dcarson@dailywoods.com

/s/ Jason T. Browning
Jason T. Browning